

**SUBSTITUTE FOR THE AMENDMENT TO H.R. 5132  
OFFERED BY MR. MCKEON OF CALIFORNIA**

**(The amendment is a substitute for the amendment offered by  
Mr. Patrick Murphy of Pennsylvania)**

At the end of subtitle D of title V, add the following  
new section:

**1 SEC. 535. REVISED GUIDANCE, TERMS OF REFERENCE, AND  
2 OBJECTIVES FOR DEPARTMENT OF DEFENSE  
3 WORKING GROUP REVIEWING POSSIBLE RE-  
4 PEAL OF CURRENT POLICY CONCERNING HO-  
5 MOSEXUALITY IN THE ARMED FORCES.**

**6 (a) MODIFICATION OF GUIDANCE AND TERMS OF  
7 REFERENCE.—**

**8 (1) MODIFICATION REQUIRED.—**As specified in  
9 paragraph (2) and subsection (b), the Secretary of  
10 Defense shall modify the guidance and terms of ref-  
11 erence issued on March 2, 2010, in connection with  
12 the establishment of the Department of Defense  
13 working group (in this section referred to as the  
14 “working group”) to conduct a comprehensive review  
15 of the possible repeal of section 654 of title 10,  
16 United States Code, which codifies United States

1 policy concerning homosexuality in the Armed  
2 Forces (in this section referred to as “section 654”).

3 (2) EVALUATION.—In making the modifications  
4 required by paragraph (1), the Secretary shall en-  
5 sure that the final report of the working group pro-  
6 vides, in addition to the matters specified in the  
7 terms of reference, a comprehensive and objective  
8 evaluation of—

9 (A) whether application of section 654 has  
10 or is undermining military readiness in any sig-  
11 nificant way;

12 (B) whether repeal or amendment of sec-  
13 tion 654 will improve military readiness in sig-  
14 nificant, measurable ways; and

15 (C) what the implications for and effects  
16 on military readiness, cohesion, morale, good  
17 order, and discipline are entailed as a result of  
18 repeal or amendment of section 654.

19 (3) SCOPE OF EVALUATION.—At a minimum,  
20 the evaluation described in paragraph (2) shall en-  
21 compass the regular and reserve components, mili-  
22 tary family members and dependents, and matters of  
23 expanded eligibility of retirees and their families and  
24 dependents for Federal benefits as a result of mili-  
25 tary service before any repeal of such section.

1 (b) EXPANDED OBJECTIVES.—In addition to the re-  
2 quirements established by the terms of reference issued  
3 on March 2, 2010, the working group shall examine and  
4 report to the Secretary of Defense on the following mat-  
5 ters:

6 (1) Whether the findings contained in sub-  
7 section (a) of section 654 remain valid.

8 (2) Whether section 654 has hindered, in a  
9 measurably significant way, the ability of the Armed  
10 Forces to recruit and retain a sufficient number of  
11 qualified personnel to meet service manpower re-  
12 quirements.

13 (3) Whether section 654 has hindered the abil-  
14 ity of any component, especially the Army, the Ma-  
15 rine Corps, and the Army National Guard, to in-  
16 crease manpower, especially during wartime.

17 (4) Whether the discharge of personnel under  
18 section 654 has had a measurably significant impact  
19 on military readiness or on the ability of the Armed  
20 Forces to carry out their wartime missions since  
21 September 11, 2001.

22 (5) Given the numbers of personnel discharged  
23 under section 654 since enactment of the section on  
24 November 30, 1993, compared to the total number  
25 of personnel separated from the Armed Forces for

1 all reasons since that date, whether discharges under  
2 section 654 have been a significant source of attri-  
3 tion for the Armed Forces.

4 (6) Whether repeal of section 654 is a military  
5 necessity for sustaining future military readiness  
6 and effectiveness.

7 (7) The extent to which, and how, repeal of sec-  
8 tion 654 would improve military readiness, cohesion,  
9 morale, good order, and discipline.

10 (8) The extent to which repeal of section 654  
11 would have negative impacts on military readiness,  
12 cohesion, morale, good order, and discipline; the na-  
13 ture and extent of the negative impacts; whether the  
14 negative impacts would be of short duration or an  
15 extended duration; and what measures will be nec-  
16 essary to negate or mitigate the anticipated negative  
17 impacts of repeal.

18 (9) Whether, and how, repeal of section 654  
19 would improve military family readiness, and the  
20 measures necessary to ensure that a repeal of sec-  
21 tion 654 would not degrade military family readi-  
22 ness.

23 (10) The extent to which repeal of section 654  
24 would affect the propensity of prospective recruits to  
25 enlist in the Armed Forces and the propensity of

1 influencers (such as parents, coaches, teachers, and  
2 religious leaders) to recommend military service.

3 (11) The extent to which repeal of section 654  
4 would affect retention, especially whether repeal of  
5 section 654 would significantly improve the ability of  
6 the Armed Forces to retain personnel to meet man-  
7 power requirements.

8 (12) Assuming repeal of section 654, the extent  
9 to which pay and benefits (such as health care, mili-  
10 tary housing, and survivor benefits) and other sup-  
11 port (such as spouse employment preferences, edu-  
12 cation and training, and dependent education) cur-  
13 rently provided by the Department of Defense to  
14 married couples and families should be provided to  
15 the domestic partners, spouses and dependents of  
16 gay and lesbian personnel, and the extent to which  
17 those benefits should be any different than the bene-  
18 fits provided to military spouses and dependents,  
19 and the extent to which those benefits could be pro-  
20 vided by policy or executive order without statutory  
21 changes.

22 (13) The extent to which Federal laws, includ-  
23 ing those regulating the Department of Veterans Af-  
24 fairs, the Department of Education, and the Depart-  
25 ment of Health and Human Services, the Uniform

1 Code of Military Justice, and Department of De-  
2 fense and Department of Veterans affairs policies  
3 would have to be changed in order for a repeal of  
4 section 654 to be effective in promoting the readi-  
5 ness, morale, cohesion, welfare and discipline of  
6 members of the Armed Forces and their families and  
7 dependents.

8 (14) Whether a statute prohibiting discrimina-  
9 tion on the basis of sexual orientation, such as pro-  
10 posed in H.R. 1283 of the 111th Congress, would be  
11 necessary or desirable as part of the repeal of sec-  
12 tion 654; and, if the nondiscrimination policy set out  
13 in such bill were enacted into law, given such bill's  
14 proposed statutory definition of sexual orientation,  
15 an evaluation of—

16 (A) the Department of Defense and Armed  
17 Forces polices that would have to be changed  
18 and the nature of the changes;

19 (B) the legal and practical implementation  
20 challenges associated with such changes, espe-  
21 cially for commanders and leaders;

22 (C) the measures required to overcome  
23 those challenges; and

1 (D) the effect such a nondiscrimination  
2 statute would have on current military billeting  
3 and housing policies and practices.

4 (15) Assuming repeal of section 654—

5 (A) whether the Defense of Marriage Act  
6 (Public Law 104–199; 1 U.S.C. 7) and the as-  
7 sociated provision of such H.R. 1283 would cre-  
8 ate a significant difference in the pay, benefits,  
9 and other forms of support from the Depart-  
10 ment of Defense, the Department of Veterans  
11 Affairs, and other Federal departments that  
12 could be provided to legally married hetero-  
13 sexual military couples, families and dependents  
14 and the pay, benefits, and other forms of sup-  
15 port that could be provided to legally married  
16 military gay couples, families and dependents;

17 (B) explain the nature and extent of those  
18 differences;

19 (C) explain the extent to which the limita-  
20 tions on benefits resulting from the Defense of  
21 Marriage Act would affect military readiness,  
22 cohesion, morale, and good order and discipline;  
23 and

1 (D) explain the extent to which this diver-  
2 sity of benefits would affect military family  
3 readiness, morale, welfare, and cohesion.

4 (16) To effectively implement a repeal of sec-  
5 tion 654, whether the Defense of Marriage Act  
6 should be repealed or amended, and explain the  
7 basis for the conclusion.

8 (17) The extent to which, and the nature and  
9 objectives of, education and training measures and  
10 programs that would be required, upon repeal of sec-  
11 tion 654, for members of the Armed Forces, their  
12 families, and dependents.

13 (18) The projected costs of a repeal of section  
14 654, including costs attributable to changes in mili-  
15 tary barracks, housing policies, and military con-  
16 struction considered necessary to accommodate var-  
17 ious sexual orientations.

18 (19) The extent to which, upon repeal of section  
19 654, gay and lesbian military retirees, their families,  
20 and dependents should be made eligible retroactively  
21 for Federal benefits in the same manner as the ben-  
22 efits received by heterosexual military retirees, their  
23 families, and dependents as a result of service in the  
24 Armed Forces, and if so, what benefits should be  
25 provided and at what estimated cost.

1           (c) REVISED REPORTING REQUIREMENT AND TIME  
2 LINES.—Not later than 30 days after the working group  
3 provides its final report to the Secretary of Defense, the  
4 Secretary shall submit to the Committees on Armed Serv-  
5 ices of the House of Representatives and the Senate a re-  
6 port containing—

7           (1) the report and recommendations of the  
8 working group, as modified as required by sub-  
9 sections (a) and (b);

10           (2) the comments and recommendations of the  
11 Chief of Staff of the Army, the Chief of Naval Oper-  
12 ations, the Chief of Staff of the Air Force, and the  
13 Commandant of the Marine Corps regarding the  
14 conclusions and recommendations of the working  
15 group; and

16           (3) the conclusions and recommendations of the  
17 Secretary of Defense, including a comprehensive pro-  
18 posal for all Federal legislation required to be en-  
19 acted or amended should section 654 be repealed.

